CONTEST FOR GOVERNOR.

PETER TURNEY, CONTESTANT,

VS.

H. CLAY EVANS, CONTESTEE.

Minority Report

... of ...

General Committee

... of ...

Investigation.

MINORITY REPORT.

To the Joint Session of the General Assembly of Tennessee, Convened under the Act of January 29, 1895, to Try the Contest of the Office of Governor of this State between Hon. Peter Turney, Contestant, and Hon. H. Clay Evans, Contestee:

The undersigned members of the committee heretofore appointed under the act approved January 29, 1895, entitled "An Act regulating the procedure in determining the vote for Governor in case of contest," beg leave to submit the following report as an embodiment of their views touching the merits of the controversy, and the results of the investigation upon which the committee has for the last forty days been engaged.

We have heretofore expressed our views in protests duly entered upon the journals of the respective houses, against the constitutionality of the resolution providing that the contestant should hold the office of Governor over and beyond his constitutional term, pending a contest in which he was contestant, claiming that he had been re-elected to the office. We have heretofore thought and still think that it was a plain duty under the Constitution of the Speaker of the Senate to open and publish the returns of the election which had been made to him in pursuance of the laws regulating that subject, and that when that was done the person who was shown on the face of said returns to have received a plurality of the votes cast in the election, was ipso facto Governor, and should have been inducted into the office. We were willing to concede the power of the legislature by a retroactive law, to provide for a contest, but we thought at the outset, and are now confirmed in the opinion, that the contest should have proceeded with the contestee Evans in possession of the office to which he had prima facie title upon the face of the election returns.

We have also expressed our views touching the unconstitutionality, unfairness, and impolicy of said act of January 29, 1895, and we will not encumber this report by a further reference to the subjects already fully adverted to in our formal protest, except to say, that we have not after mature reflection and calm consideration, seen any reason to change the views therein expressed by us, but we have rather been confirmed in their soundness from a legal and constitutional point of view and in the wisdom of our suggestions from a political point of view.

While, as we have stated, we are willing to concede the power of the legislature to provide by a retroactive law for a contest, in view of the fact that the constitution has recognized the right and designated the tribunal, and nothing was left to the legislature except to provide the mode of procedure, yet we deem it appropriate to call attention, that, neither expressly nor by implication, does the act of January 29th, 1895, declare that its provisions apply to the election held on Nov. 6, 1894. This being so, there seems to be grave doubt as to whether it is within the province and power of the General Assembly to determine the present contest, under the provisions of said act.

It seems to be "the settled and inflexible rule that a statute will be construed as prospective and operative in future only, unless the intention of the legislature to give it a retroactive effect is expressed in language too clear and explicit to admit of a reasonable doubt."

3rd Vol. Am. and Eng. Ency. of Law p. 757-758; Cooley's Const. Lim., 370.
stitution.

I.

Action of the Committee, Making Up Issues and Adopting Rules.

From the expressions of the public-journals which favored the contest proceedings, from the statements in pamphlet printed and widely circulated by Mr. William H. Carroll, Chairman of the Democratic Executive Committee, and from a manifesto issued by the full committee of that party only a few days before the General Assembly met, we were encouraged to believe that it was the desire and purpose of the dominant party in the legislature to institute and carry forward a full and thorough investigation of alleged frauds, illegalities and irregularities, which it was claimed had occurred and been practiced in the Governor's election. The advocates of these measures in the Senate Chamber and on the floor of the House promised the country that the investigation should be complete and thorough, and should not be restricted within the narrow limits of technical rules of pleading and evidence.

However, after the bill had been passed, the contestant Turney filed a voluminous petition, which upon its face bears the evidence that it had been prepared even before the passage of the bill.

Contestee Evans was only allowed five days in which to file his answer to the specific charges of the petition, and to file his counter petition, and although this pleading required immensely more labor in its preparation than that of contestant Turney, it was prepared and filed within the short time allowed.

With very few unimportant exceptions, Contestant Turney made no charges of actual fraud, but relied alone upon the allegations that in certain of the districts in the counties to which he had filed objections, voters had been permitted to vote without being required to produce to the judges of election the evidence prescribed by the Act of 1891, hereinafter to be mentioned, that they had paid the poll taxes for 1893, for which they were liable under the revenue laws of this state.

Some of the few exceptions above referred to were: 1st. That in Campbell county, in the First and Ninth districts, a republican had openly bought votes for Contestee Evans; 2d. That at the Mooresburg district of Hawkins county a number of votes cast for Contestant Turney were corruptly counted for Contestee Evans, and, 3d. That in Knox county republican deputies were appointed by the republican sheriff to go into the polls and mark ballots for voters in violation of law. Neither of these charges were substantiated by proof, and the committee has so decided.

The contestee Evans, by this manner, denied and put in issue every material averment of contestant Turney's petition, and filed a counter petition in which he charged not only the non-production of poll-tax receipts by the voters in the several districts of about forty counties, but the actual non-payment of poll taxes assessed against democratic voters in these counties, and in many of the counties objected to, he charged the grossest actual fraud, ballot-box stuffing and fraudulent counting, by the friends and supporters of contestant Turney, done in his interest. These charges have been fully sustained by proof; and, in a number of instances, no attempt to disprove them was made.

The committe appointed under said Act met to consider and determine what particular matters they would investigate under the pleadings made up by the parties, and in our opinion adopted certain rules and made certain decisions upon the pleadings, which were exceedingly unfair to the contestee Evans; and as a result of said rulings by a majority of said committee, the investigation of the charges made by contestee Evans was practically cut off, while the contestant Turney was allowed the utmost liberty and the greatest freedom to investigate the charges made by him.

The rules adopted by a majority of the committee, and under which the investigation has been conducted, are as follows:

"1. The objection to the respective counties specified by the parties in the petition, answer, cross petition and replication having been considered by the committee and the issues made thereby under the act of January 28, 1895, approved January 29, having been ascertained, defined and determined, no evidence which is immaterial or irrelevant to the issue as ascertained and defined as aforesaid shall be taken or received by this committee or any section thereof, and such evidence as is material and relevant to such issues under the laws of this state and under the rules and principles recognized by congress and the general assembly of Tennessee or either house of the assembly in contested election cases, shall be received and taken.

"2. A general averment of irregularities in any county, followed by an attack upon designated voting precincts in that county, puts in issue the vote of such precincts only as are specifically enumerated, and subcommittees will take and hear evidence in such cases alone as to those voting precincts specifically enumerated and attacked.

"3. Unless the party filed exceptions to a county on the call of counties by the joint convention he shall not be permitted to introduce evidence attacking the vote of a county, although he may have presented an issue thereon by his pleadings; provided the attack of either party upon the vote of any polling place puts the entire vote of that polling place in issue, so that both parties may prove and have the benefit of all allegations affecting the same.

"4. Neither party shall be permitted to call and examine more than two witnesses upon any uncontroverted question of fact, or to call or examine witnesses upon immaterial or irrelevant issues or matters, or concerning matters admitted by the pleadings; and either party calling witnesses in violation of this rule shall pay the cost and expenditures incident thereto. The committees will not recommend such costs for payment by the state.

"5. Either party applying for subpoenas for witnesses will be required to state in a written application the questions of fact upon which said witnesses are to be examined and what their testimony is expected to be upon said question.

"6. The forty days within which the taking of evidence is limited by section 9 of the act regulating the procedure, etc., will not begin until Monday, the 25th day of February, 1895.

"7. That the chairman of each sub-committee shall as often as practicable forward the testimony and proof taken by them to the chairman of the central sub-committee at Nashville, in care of the clerk of the senate, together with a brief abstract of said testimony; and that counsel for contestant and contestee be furnished a copy of said proof as rapidly as printed, and the clerk of the senate will allow representatives of the press to inspect said testimony, provided he does not allow it to be taken out of his possession.

"8. This committee, being satisfied from the eleventh official United States census and the certificate duly authenticated and filed from the department of the interior that 25 per cent. of the voters of Tennessee are not liable to poll taxes or assessable therefor, and the taking of evidence of individual voters to prove their respective ages being impracticable and expensive, and in the end not liable to be more accurate than the official records of the census taken by the United States officials under oath; and it further appearing that the rule is not only substantially accurate, but just alike to both parties, it is ordered that it be taken that the rule established that 25 per cent. of the voters of any and every precinct be accepted and taken as not liable to the payment of poll taxes and in dealing with the vote of any district, precinct or county it shall be dealt with on that basis. In the absence of proof as to which of the candidates such non-liable voters voted for they shall be prorated among the candidates for Governor according to all the votes cast at said precincts for them respectively."

The minority of the committee offered the following rules, which were tabled and rejected by the majority, to-wit:

"1. Neither contestant nor contestee shall be restricted in taking proof to the issues which the committee have made, but may take such proof as either of them or either counsel deem material and necessary to determine the truth or falsity of any of the charges made by contestant or contestee in the petition or cross petition, so that the vote cast for Governor can be determined by the genral assembly in joint convention. But either party taking immaterial or irrelevant testimony will be taxes with the costs of taking and printing the same.

"2. Whereas, the people of the state of Tennessee demand a full, fair and complete investigation of the alleged frauds in the recent election for Governor; be it

"Resolved, by this committee that both the contestant and contestee be allowed to take proof upon all matters set out or complained of in the petition or cross petition, and when said proof shall have been taken it shall be filed with this committee. But either party taking immaterial or irrelevant proof shall be taxed with the costs incident to taking the same. The proof may be taken before either of the sub-committees of this committee.

"3. Where the sole charge either in the original petition or in the answer is that the voters were not required to or did not in fact produce poll tax receipts or duplicates or affidavits the inquiry shall not be discontinued, but shall proceed further to ascertain whether, in fact, the poll taxes were actually paid.

"4. The committee is not to adjudge and determine finally as to the admissability, materiality or relevancy of testimony offered by counsel upon any question raised in the pleadings and relevant to the issues made up between the contestant and contestee. But testimony, when offered, shall be taken, received and filed, subject to exceptions, as in suits in the courts of the state is provided."

The minority of the committee prepared the following protest, which they would have submitted to the committee, but a majority was not present and they were unable to submit the same, to-wit:

"We, members of the committee appointed to take testimony in the case of Peter Turney, contestant for the office of Governor, against H. Clay Evans, dissent from and protest against the action of the majority of the committee in certain rulings and set forth below the reasons for such dissent and protest:

"First—Inasmuch as this contest was begun by and at the instigation of the democratic state committee, which charges the republicans with wholesale, deliberate and systematic violations of the poll tax law; and inasmuch as Contestant Turney in his petition charged a conspiracy of the same kind and charged republican leaders, some by name and others, Contestee Evans among them, by implication, with encouraging these violations of law, we dissent from and protest against the action of the majority of the committee, denied, as the charges were by Contestee Evans, in refusing to consider issues made and to take proof on these portions of the petition and answer.

"Second—We strongly dissent from the rulings of the majority of the committee in considering the pleadings relating to certain counties which will be hereafter named, which rulings declare that the allegations of contestee in regard to violations of the poll tax law in the counties hereafter to be named in the following words:

" 'That said voters so liable for said poll tax were not required to produce, and did not in fact produce to the judges of election of the several precincts, districts and voting places of said county any statutory evidence that they had paid said poll tax, but their votes were nevertheless received and counted for the contestant,' were insufficient as specifications. The refusal of the majority to allow issue to be made on such an allegation we regard as an unfair and unwarranted contraction of the scope of the investigation and that it goes to prevent that full and complete investigation demanded by fair dealing and public sentiment, since provision has been made for an investigation of the Governor's election. That part of contestee's allegations above quoted was intended to put in question the whole of the counties about which they were used and that is their plain meaning. This is an extraordinary case in which the broadest and most liberal construction should be given to the law to the end that the people of Tennessee may be fully informed as to the truth or falsity of the charges made in this con

test, but the majority has, in our opinion, wrongfully construed the law so as to prevent an investigation in a considerable number of counties and parts of counties by disregarding the plain and specific meaning of the charges in Contestee Evans' answer and counter charges to Contestant Turney's petition.

"Among the counties and parts of counties so ruled out are the following: The whole of Giles county. Henry county, except three districts; all of Madison county as far as an investigation of the violation of the poll tax law was demanded; Maury county in the same manner; Moore county, although Contestant Turney admitted the charge as to part of that county; all of Smith county, except the town of Carthage; all of Coffee county, as far as investigation of violations of the poll tax law were demanded; all of Dyer county, except one district; all of Fayette county, as regards violation of the poll tax law, except one district; Franklin county, except two districts; Grundy county, except three districts; Hardeman county, except one district; all of Lauderdale and Putnam counties; Wilson county except two districts; White county, except five districts, and Van Buren county, except three districts. Parts of other counties objected to by Contestee Evans were excluded from the investigation by the construction of the law adopted by the majority. We believe that this action is unjust to the contestee and greatly prejudices his case; that it is a strained construction of the law; that it is a construction that would not be adopted by any court in the land and that it so limits the investigation as to in a great degree insure its failure, if its purpose is to procure a full knowledge of the facts of the election for Governor of Nov. 6, 1894. All of which is respectfully submitted.

"JOHN W. STONE,
"SAM P. ROWAN,
"JAMES JEFFRIES,
"W. J. HODGES,
"L. C. KEENEY."

The minority also dissented from and objected to the adoption of the 1st, 2d, 5th and 8th rules; they did not and do not interpret or construe the contest law as conferring power or authority on this committee to eliminate from the pleadings any of the issues joined by the parties to the contest. They did not and do not concur with the majority in the adoption of the 25 per cent. rule, based upon the United States census, to the exclusion of all other evidence on the subject. We call attention to the fact that the proof shows 124 votes cast in the Third district of Fentress county, when, by direction of one of the members of the sub-committee, it was ascertained that 53 of these voters were over the age of 50 years and not liable for poll tax for 1893. This was done to test the correctness of the 25 per cent. rule.

II.

Exceptions by Counsel.

Counsel for Contestee Evans prepared certain exceptions to the action of the committee in respect to the rules adopted by it and to its holdings as to the issues presented by the pleadings, which exceptions we think were well taken and which the majority of the committee has reluctantly allowed to be printed, but not as a part of the record. They attach said exceptions as an exhibit hereto and ask that the same may be considered and formally made a part of this, our report, and we refer thereto as if here set out in extenso. We call special attention to said exceptions, which, together with our said protest, plainly and succinctly point out many of the inconsistencies and erroneous and arbitrary rulings and their application to and effect upon the pleadings.

III.

As to the Pleadings.

The pleadings consisted of Contestant Turney's original petition, the answer and counter petition of Contestee Evans, and Contestant Turney's replication thereto. The rules of the committe limiting the scope of the pleadings after they were filed and without affording opportunity for amendments were manifestly unjust.

Especial attention should here be called to the fact that under the contest law no opportunity is given to amend the pleadings; by the terms of the act the committee has no power or authority to allow an amerdment. Contestee was therefore powerless and was bound to go into the investigation under the rules adopted by the committee after the pleadings had been filed and after the time for pleadings had elapsed. The fact that the contest law does not admit of amendments of the pleadings and that the rulings of the committee were made after all the pleadings had been filed as provided in the contest law, should not be left out of consideration. Had those rules been adopted and established by competent authority before the pleadings were filed they would have been notice to contestee to shape the pleadings in accordance with the rules. But such, as we have shown, was not the case. Instead of obeying the spirit and the letter of the law, which says: "The pleadings shall make the issues," the committee through its majority has usurped the power and authority of "making issues," which alone shall be investigated, and eliminating "issues" joined by the parties. In the opinion of your minority, the general assembly alone, and not the committee, could exercise authority to adjudge and define the issues which are the subject of inquiry. Full opportunity should have been given to introduce proof upon all the issues joined in the pleadings as they were referred to your committee by the general assembly.

Contestee Evans' answer took issue upon all the material averments of Contestant Turney's original petition, and the replication filed by Contestant Turney took issue upon most of the averments of the counter petition, and notwithstanding the fact that Contestant

Turney had by direct denial in his replication taken issue of fact upon the averments of the counter petition, the committee assumed to decide that the counter petition, in respect to these matters, was not sufficiently specific to call for an issue. This action of the committee was palpably erroneous, for the reason that the Contestant Turney by answering the averments had admitted their sufficiency in law to raise an issue. For example, Contestee Evans charged that in everyone of the counties of Bedford, Cannon, Cheatham, Coffee, Chester, Clay, Davidson, Dickson, Dyer, Fayette, Franklin, Gibson, Giles, Grundy, Hardeman, Haywood, Henry, Humphreys, Lawrence, Lauderdale, Lewis, Lincoln, Madison, Marshall, Maury, Moore, Overton, Perry, Putnam, Robertson, Rutherford, Sequatchie, Smith, Stewart, Sumner, Tipton, Trousdale, Van Buren, White and Wilson, a large number of the votes were cast for Contestant Turney by persons who were liable for the poll tax of 1893, and who had not paid the same before they voted.

This averment was answered by Contestant Turney as follows:

"The contestant, answering the charges of contestee's cross petition, that votes were cast and counted for contestant which were illegal by reason of the voter not having paid his poll tax, * * * contestant does deny that any considerable number of votes were cast for him by parties who had not paid their poll tax." Book of Pleadings, page 159.

This presented a sharp issue of fact, but the committee decided that there was no issue upon this subject.

But the most objectionable feature of this action of the committee is that under the contest law they had no power or authority whatever to settle and determine the issues between the parties. That was left to the parties themselves to settle and determine by their own pleadings. Section 9 of the contest act defines the powers and duties of the committee, and it is as follows:

"Section 9. Be it further enacted, That the objection and petition following original objections shall be referred to the committee above mentioned. The committee shall take evidence, consider and report upon said objections, making their report to the speaker of the senate. They and also either section shall have power to send for and examine persons and papers; to issue compulsory process for them, running to every county in the state, which may be executed by the sergeant-at-arms of either house, or any assistant sergeant-at-arms, or any sheriff, deputy sheriff or constable, or any special agent appointed by the chairman of the committee or by the chairman of any section of the committee, and to punish for contempt by fine and imprisonment; to employ stenographers; to sit for the taking of evidence at Nashville, and at any and all places in Tennessee, and when, in their judgment necessary, in four sections or sub-committees, to take depositions upon such notice, and under such rules and regulations as they may prescribe in the absence of rules prescribed by the legislature; to fix the time in which the evidence in chief and rebuttal shall be produced or taken, and of argument, and to do all things proper and necessary to ascertain the facts and report thereof; provided, however, that all the evidence shall be taken within forty days next after the issues made; provided, that if within forty days the committee of investigation shall ask further time the assembly may grant the same."

The committee by arrogating to itself the power of settling the issues and by refusing in violation of the statute to take the pleadings made up by the parties as making the issues, and thus narrowing the issues in an arbitrary and, in many instances, an unjust and unreasonable way, and refusing to hear proof except upon the issues made by the majority of the committee, has deprived Contestee Evans of his rights, has excluded much material evidence from the consideration of the general assembly, thus depriving it of the information and evidence necessary to a correct decision of the contest. The sources of information have been closed by the majority of the committee and its action has largely prejudged and predetermined the contest upon which the assembly alone had a right to pass.

We here set out and show to the joint assembly some of the unfair rulings made by the committee against the Contestee Evans, which have not already been shown.

The averments of the petition, applying to the several counties set out above, and charging non-payment of poll tax by voters in the election were not investigated at all. As to each county Contestee Evans made the following averment:

"That of such voters so liable for said poll tax, a very large number had not in fact paid said poll tax, but were nevertheless allowed to vote for contestant, and their votes were counted for him and embraced in the returns."

If there was originally any tenable objection to these averments the objection was waived by the answer, according to well known rules of pleading.

But, in our opinion, the averments were not obnoxious to the objection taken to them by the majority of the committee. The contest act, speaking of specific assignments by the contestee, says "designating the counties, civil districts, wards and precincts." The plain meaning of this act is, that where the objection is to the entire vote of the county or involves a deduction from the aggregate vote of the county, the objection is only required to specify the county; where it relates to particular acts of illegal voting, the objection must specify the particular box in which the illegal ballots were deposited. If Davidson county, for example, had refused to conduct the election in accordance with the Dortch ballot law, and had voted throughout the county in defiance of that law, this would have afforded ground for the objection to the vote of the county. So the non-pay-

ment of poll taxes by voters involves an objection to the vote of the entire county; the taxes are required to be paid to the trustee, at his office, and if the taxes are not paid, evidence of the non-payment is procurable from the trustee. If it can be shown that a given number of voters voted in the election for contestant Turney in a given county without having paid their taxes, it is unimportant to show in what particular district the votes were cast. They were included in the return, which is certified as a unit, or in bulk, to the Speaker of the Senate.

There is more reason for requiring the specification of the particular box, when the vote is illegal or claimed to be illegal, on the ground of non-residence, or for the non-production of the poll tax receipt, or for actual fraud in the vote or count.

Again,as to all or most of these counties the contestee Evans made the following specific charge:

"That said voters so liable for said poll tax were not required to produce to the judges of election, and did not, in fact, produce to the judges of election at the several districts, precincts, and voting places of said county, any statutory evidence that they had paid said poll tax, but their votes were nevertheless received and counted for contestant.

This averment, without any qualification whatever, was made against the counting of Giles, Moore and Putnam; as to the county of Cannon, the same averment is followed by another paragraph averring that in the twelfth district a large number of persons were permitted to vote without exhibiting poll tax receipts; the charge as to Clay county is followed by another paragraph alleging the same condition as to the sixth and twelfth districts of the county; as to Coffee county, a paragraph is added, charging non- production of tax receipts in the first district; as to Dickson, the same charge is followed by another paragraph, applying to the first, third, fourth, fifth and twelfth districts; against Dyer county, the same charge is made and no charge added limiting the charge to any particular district. In Gibson county, the charge of non-production of poll tax receipts applying to all the districts, is followed by paragraphs 3 and 4, applying the charge to three districts, and so on through the list of counties objected to by contestee Evans. The committee ruled that where the charge against each and every of the districts of a county was followed by one which applied only to a few of the districts, only the few districts were in issue, notwithstanding the contestant Turney had made specific denials in his answer as to the other districts. We think that this action of the committee was erroneous. We think the committe erred in ruling out the investigation of the counties where it was charged that in every precinct, district and voting place, voters were permitted to vote without the exhibition of poll tax receipts, duplicates or affidavits of loss. This averment is quite as specific as if the districts had been set out by their number.

The counter-petition of contestee Evans charges that the poll tax law was disregarded in all the eighteen districts of Marshall county, execept the 3rd, 7th and 15th; it charges that the law was disregarded in respect to the exhibition of receipts in all the precincts, districts and voting places of Maury county, except in the town of Columbia.

No lawyer or other person can perceive any difference in a legal sense between the charges against the counties, yet the committee decided to investigate Marshall, and refused to investigate Maury county.

As to Robertson county, the charge was that the law was violated in all the districts except Springfield and Cedar Hill. In Smith, the same violation was alleged against every district except Carthage. The committee investigated Robertson but refused to investigate Smith, except as to the district objected to by contestant Turney.

Against Moore county, contestee Evans charged that the voters liable for poll taxes were not required to produce and did not produce to the judges of election at the several precincts of the county any statutory evidence that they had paid said poll tax. Contestant Turney admitted the truth of this allegation as to the sixth district but denied it as to all the other districts of this county. Notwithstanding this admission as to one district and the joining of issue as to the others, the committee decided that no inquiries should be made into the vote of this county, claiming that Contestee Evans' charges were too vague and general. The committee of its own motion demurred to contestee's counter-petition and sustained the demurrer after the contestant had answered the allegations of the counter-petition.

The erroneous and conflicting rulings made by the committee against Contestee Evans are too numerous to be mentioned; many of these not herein set out are shown and set out in the exceptions taken by contestee's counsel heretofore made part hereof, and those exceptions are here referred to for particulars.

The injustice to Contestee Evans of these rulings will be appreciated when it is remembered that he filed objections to forty-one counties and made specifications against 789 of the 873 districts and voting places of said counties, but by the action of the committee the investigation into the election in said counties was limited to 253 voting precincts, whereas the committee permitted an investigation, with two or three unimportant exceptions, of every county, district and precinct as to which Contestant Turney filed any objection.

Had the charges of Contestee Evans been fully investigated in the counties against which he filed charges and specifications, and which counties gave 60,823

for Turney and 29,803 for Evans, a careful estimate will show, using the few districts that were investigated as an example or basis and after applying the arbitrary rule of 25 per cent. established by the committee as a reserve in each county, that Contestant Turney would lose 22,309 votes and Contestee Evans on same basis 10,926. This calculation would increase Evans' majority by 11,583. Deduct from this the 2,184 majority given Turney by the majority report and it would leave Evans a net majority of 8,399 votes.

While we do not believe that the mere non-production of a poll tax receipt should make a legal voter illegal, and while we are firmly convinced that the failure of the election judges to examine the receipts of voters should not operate to destroy an otherwise legal vote, we believe the committee ought to have investigated the charges in every county and district complained of; and if votes are to be rejected on this ground in the interest of Contestant Turney, the same rule should apply in favor of Contestee Evans.

If the committee had accorded a full and thorough investigation of the charges made by the Contestee Evans it is perfectly apparent that the result would have largely increased his plurality, and we cannot believe that a majority of the general assembly can consent to overturning the will of a majority of the people and to seating the defeated candidate upon an investigation so manifestly unfair and partial as that upon which we have been engaged. We cannot believe that this general assembly will permit its functions to be monopolized by a mere committee to the exclusion of every other member who has equal power and equal rights.

The line of policy pursued by the majority of the committee while testimony was being taken was not calculated to develop the truth and result in a full investigation, but on the contrary, Contestee Evans' counsel were restricted within the narrowest limits and the most rigid rule of technicality was enforced against them.

Many of the requests made by Contestee Evans' counsel for witnesses to prove that in the counties objected to by Contestant Turney the voters had in fact paid their poll taxes, and in the counties objected to by Contestee Evans that the voters had not paid their poll taxes, ought to have been granted and the proof taken, but the requests were refused.

We submit herewith some of the requests of counsel, with such affidavits as have been taken on these points, which we think should be considered by the assembly in deciding the case.

To illustrate we specify the following:

In Fayette county it was charged that in a number of districts the voters had not paid their poll taxes, and in support of that charge Contestee Evans offered certified transcripts from the trustee's books, and also exemplifications from the records of the county court, giving the names of taxpayers who were delinquent, which evidence was erroneousiy rejected by the sub-committee, and we herewith submit said transcripts and exemplifications, which ought to be read in evidence in connection with the deposition of the trustee, for all the purposes set out in the exceptions filed by Contestee Evans to the rulings of the subcommittee.

The committee erroneously rejected evidence offered by Contestee Evans as to the Third district of Lauderdale county; the ground upon which the evidence was rejected was that the district was not involved in the specifications. It was in point of fact involved, the charges being very specific and giving details clearly applicable to the Third district, but the copyist or printer had made a mistake in setting out the number of the district. We do not think the investigation should have been cut off by a mere error in the number of the district, when it is plain that the particular district and voting place was intended to be charged.

Notwithstanding rule 1, adopted by a majority of the committee, permitted, "no evidence to be taken which is immaterial or irrelevant to the issue as ascertained and defined by the committee," the majority threw out 15 votes of those cast in Rhea county and about 70 votes of those cast in Morgan upon the pretended claim that many blank poll tax receipts had been issued to voters in said counties at the August election; but there were no such charges in the pleadings against said counties, and the committee "joined no such issues." On the other hand, as to Roane and Davidson counties, there were charges in the pleadings, and the committee "joined issues" upon them, that blank poll tax receipts had been issued for the August election and used in the November election; the charges as to Davidson county were especially specific, as will be seen by reference to the book of pleadings, pages 89 and 90. Roane county gave Evans a large majority; Davidson county gave a large majority for Turney. The proof in Davidson county was that 2,000 blank poll tax receipts had been issued by the democratic trustee to a prominent democratic politician in said county prior to the August election, and there is evidence that these or many of them were used at the November election. Yet no votes were thrown out in Davidson county on that account; while in Roane county, where the proof was not any more satisfactory or certain than in Davidson, the majority did throw out about 400 votes, 35 of which were taken directly from Evans' aggregate, and the balance of the 400 votes were pro-rated in the ratio of 2,300 to Evans and 597 to Turney.

Contestee Evans charged that twenty-five illegal votes were cast for Contestant Turney in the Sixteenth district of Obion county, but the committee refused to permit an investigation of this charge upon the ground that the Sixteenth district of said county contains two voting places. The Contestant Turney made a charge that in the Knoxville precinct in Knox county he lost twelve votes by an alleged false count. Now there is no such place as the Knoxville precinct, but there are in the city of Knoxville eight wards, each having a voting place in it. The committee allowed this charge to be investigated. The action of the committee was wrong in one case or the other; the decisions are in direct conflict, and they show that the widest latitude was allowed the Contestant Turney and the utmost restrictions were placed upon Contestee Evans.

The rulings of the majority of the committee in settling the pleadings and of the chairmen of the sub-committees in the reception and rejection of evidence have been manifestly partial towards Contestant Turney, and strict and illiberal towards Contestee Evans. Throughout the whole contest the plain purpose has been to allow the utmost latitude to Contestant Turney and to deny to Contestee Evans the right of investigation whenever the most flimsy pretext for doing so could be found. In carrying out this plan the majority of the committee has not hesitated to involve itself in contradictions when found necessary to accomplish the object held constantly in view. It is deemed unnecessary to go further into details, but the partiality and illiberality which have marked this investigation from the beginning are such that if the seating of the Contestant Turney is accomplished by it it will be accomplished by means so questionable that they can never be indorsed by thinking people of any political party. The majority of the committee have even gone so far as to disregard positions taken by the Contestant Turney himself, as has already been shown. It has pretended to be liberal to Contestee Evans while doing him flagrant injustice. For instance, in passing on the averments and answer as to Carter county, the majority say:

"Carter County—In this county the committee, though deeming Mr. Evans' answer to be vague and evasive, elects to treat it as joining issue with contestant upon his averments and so direct."

The answer of Mr. Evans to the averment of the Contestant Turney as to Carter county will be found upon page 68 of the book of pleadings. It is not "evasive" or "vague," but squarely meets and denies the charges made, and the pretended liberality of the committee is based upon an erroneous statement calculated to deceive and mislead as to its true purpose. But the majority had occasion to make use of this ruling as to Carter county, and we find the ruling as to Cheatham county in these words:

"Cheatham County—Issue joined as to the 1st, 4th, 5th, 6th, 7th, 8th, 10th 11th, 13th, 14th and 15th as in Carter county."

Comparing this ruling with that as to Carter county, it would be supposed that Contestee Evans had made an "evasive and vague" answer to Contestant Turney's charge as to Cheatham county. But how are the facts? Contestant Turney makes no charges as to that county, but the charges come from Contestee Evans, and are actually admitted by Contestant Turney, and yet the majority charge the Contestee Evans with "evasion." The charges made by Contestee Evans as to this county are clear, emphatic and specific. They will be found on page 84 of the book of pleadings. The districts are named. When Contestant Turney comes to answer he admits Contestee Evans' charges as to districts —— —— in Cheatham county. (See pages 159-160, book of pleadings.) And again he says on page 163 that he has no doubt districts 2 and 3 of Cheatham county are infected in the same way that the districts attacked by Contestee Evans are infected. And yet, on this state of the pleadings the majority ruled there was an issue requiring proof on the part of Contestee Evans. And this in face of the statute which says that "such charges as shall not be denied shall be taken and considered by the general assembly as true." Act Jan. 29, 1895, section 8.

Comment upon such rulings is deemed unnecessary. They are instanced to show how utterly inadequate to the attainment of justice this so-called investigation has been made by the arbitrary rulings of the majority of the committee.

IV.

Unconstitutionality of the Poll Tax Receipt Law.

Your minority begs leave to here call attention to the following paragraph from contestee's answer, which in our opinion raises a material and vital issue:

"In this connection contestee states that he is advised, and he will so insist, that the act of the general assembly of 1891, whose provisions are set out in the petition, and which declares that the judges of the election are required to receive certain specified evidence of the payment of poll taxes and none other, is in conflict and obnoxious to the provisions of Article IV. of the constitution prescribing the qualifications of a legal voter, said article only permitting the legislature to enact that a voter may be "required to produce to the judges of election satisfactory evidence of the payment of said tax." No other qualification restrictive of the right of voting is permissible."

To fully understand the force of this objection made in the answer of contestee Evans, it is necessary to here refer to the provisions of the constitution and the stat-

utes upon the subject of poll taxes and qualification of voters.

It is provided in section 28, Art. II., of the constitution, as follows:

"All male citizens of this state over the age of twenty-one years, except such persons as may be exempted by law on account of age or other infirmity, shall be liable to a poll tax of not less than fifty cents nor more than one dollar per annum. Nor shall any county or corporation levy a poll tax exceeding the amount levied by the state."

In section 12 of Art. XI. of the constitution it is provided:

"The state taxes derived hereafter from polls shall be appropriated to educational purposes, in such manner as the general assembly shall, from time to time, direct by law."

Section 1 of Art. 4. of the constitution provides that—

"There shall be no qualification attached to the right of suffrage, except that each voter shall give to the judges of election, where he offers to vote, satisfactory evidence that he has paid the poll taxes assessed against him for such preceding period as the legislature shall prescribe, and at such time as may be prescribed by law, without which his vote cannot be received. * * * The general assembly shall have power to enact laws requiring voters to vote in the election precincts in which they may reside, and laws to secure the freedom of elections and the purity of the ballot box."

Three acts of the general assembly have been passed affecting the poll tax qualification of voters. The first was that of March 14th, 1890, which is strictly in accordance with the constitution and is as follows:

"Section 1. Be it enacted by the general assembly of the State of Tennessee, That every person in this state who is otherwise a qualified voter under the constitution and laws, shall, as a condition precedent to the exercise of voting, furnish to the judges of election satisfactory evidence that he has paid the poll tax, if any, assessed against him for the year next preceding the election, without which his vote shall not be received; provided, if any voter has been wrongfully assessed for such poll tax, this act shall not apply to him.

"Sec. 2. Be it further enacted, That this act take effect from and after its passage, the public welfare requiring it."

The next act was that of March 30, 1891, which, with its title, is as follows:

"An act to amend an act passed by the first extra session of the general assembly of the state of Tennessee, on March 11, 1890, approved March 14, 1890, being Chapter 26, Acts 1890, being an act entitled 'An act to regulate the elective franchise in accordance with Article IV., Section 1, of the constitution of the state, and to prescribe what shall be the satisfactory evidence that is contemplated and required in said section and article of the constitution and in said chapter, which shall be furnished judges of elections by one offering to vote, that he has paid his poll tax as required by said chapter, if any is assessed against him for the preceding year."

Section 1. Be it enacted by the general assembly of the State of Tennessee, That Chapter 26 of the Acts of Extra Session, 1890, approved March 14, 1890, entitled an act to regulate the elective franchise in accordance with Article 4, Section 1, of the constitution of the state, be so amended as to require that the satisfactory evidence to be furnished by the voter to the judges of election that he has paid the poll tax assessed aginst him, if any, for the preceding year, as contemplated and required by said article and section by said chapter, shall consist of the original poll tax receipt or a duly certified duplicate and copy of the same, properly certified by the trustee, or shall make an affidavit that he has paid his poll tax and that his receipt is lost or misplaced, which affidavit shall be filed with the said judges of election.

Section 2. Be it further enacted, That the words "assessed against him" in the twelfth line of said act are hereby made to contemplate and mean the poll tax for the year or years named in the act, due by the voter and to which he is made subject under the revenue laws of the state, whether the name of the voter appears on the books of his county tax assessor or not.

Section 3. Be it further enacted, That any person voting or any judge of any election permitting any person to vote in the same without having first complied with the provision of Section 1 of this act, shall be guilty of misdemeanor, and on conviction thereof, shall be fined not less than fifty dollars, and imprisoned in the county jail or work house not exceeding ninety days, in the discretion of the court.

Section 4. Be it further enacted, That all laws and parts of laws in conflict with this act be and the same are hereby repealed.

The last act upon the subject is that of Sept. 18, 1891, which is as follows:

Section 1. Be it enacted by the general assembly of the State of Tennessee, That Chapter 222, of the acts of the regular session, approved March 30, 1891, regulating the elective franchise in accordance with Article IV., Section 1, of the constitution of the state, be so amended as to require that the satisfactory evidence to be furnished by the voter to the judges of the election whether general or special, whether national, state, county or municipal, that he has paid the poll tax contemplated by the constitution, assessed against him, if any, for the year next preceding said election, shall consist of the original poll tax receipt, or a duly certified duplicate and copy of same, or the duly authenticated certificate set out in Section 8 when said tax has been paid to a constable and not to said trustee, properly certified by the trustee, or shall make affidavit in writing and signed by the voter that he has paid his poll tax and that his receipt is lost or misplaced, which affidavit shall be filed with the said judges and by them attached and made an exhibit to the returns of said election.

Section 2. Be it further enacted, That in case the voter has lost or mislaid his poll tax receipt and seeks to cast his vote on an affidavit being made of such loss or mislaying as aforesaid, the following shall be the formula: (Here follows form of affidavit.)

And any one of the judges of said election is hereby authorized and empowered to administer said oath; provided, that a voter swearing falsely in said affidavit is thereby guilty of perjury, and on indictment and conviction shall be subject to all the pains and penalties thereof.

Section 3. Be it further enacted, That it shall be the duty of the trustee, in case any legal voter has lost or mislaid his poll tax receipt heretofore issued, and who shall

apply for a duplicate and copy thereof, to issue the same. Said duplicate shall be an exact copy of the original lost or mislaid, and upon the back of which said trustee shall make the following certificate: (Here follows form of certificate.)

Section 4. Be it further enacted, That the words "assessed aginst him," occurring in the first section of this act, are hereby made to contemplate and mean the poll tax due by the voter for the year next preceding the election in which the vote is to be cast, and to which he is made subject under the revenue laws of the state, whether the name of the voter appears on the books of his county trustee or not.

Section 5. Be it further enacted, That any person voting, or any judge of any election permitting, knowingly, any person to vote in the same without first having complied with the provisions of Section 1 of this act, shall be guilty of a misdemeanor, and, on conviction thereof, shall be fined not less than fifty ($50) dollars, and imprisoned in the county jail or work house ninety (90) days.

Section 6. Be it further enacted, That any trustee or his deputy who shall issue any blank or bogus receipt for the poll tax herein before alluded to, or make a false certificate on any duplicate receipt, shall, for every such blank or bogus receipt issued as aforesaid, or false certificate made, be thereby guilty of a misdemeanor, and, on conviction, fined fifty ($50) dollars, imprisoned in the jail or work house of his county ninety (90) days, and disqualified for election or re-election; and any trustee refusing to give a duplicate copy of the poll tax receipt lost or mislaid as aforesaid, shall likewise be guilty of a misdemeanor and punished as in case of issuing blank or bogus receipts as aforesaid.

Section 7. Be it further enacted, That the grand juries of this state are hereby given inquisitorial powers of offenses committed under this act and the several circuit and criminal judges are required to give this act specially in charge on the organization of each grand jury in their respective courts.

Section 8. Be it further enacted, That when any such poll tax shall have been paid to the constable and not to the trustee, said trustee, in giving to the voter the like certificate of payment as contemplated in Section 3, instead of issuing to said applicant a copy of said receipt, shall issue the following certificate: (Here follows form of certificate.)

Provided, first, that the issuance of any bogus or false certificate in this section required shall be punished as required by Section 6, and that any person voting on any such bogus or false certificate, or any judge knowingly permitting any such person to vote on such certificate, shall be punished as in Section 4.

Section 9. Be it further enacted, That all laws or parts of laws in conflict with this act, be, and the same are hereby repealed, and that this act take effect from and after its passage, the public welfare requiring it.

A.

The acts of March and September, 1891, are unconstitutional because they impose a qualification upon the right of voting prohibited by the constitution. These acts are not mere regulations to secure the purity of elections, but they impose a qualification upon the right of voting.

Payne on Elections, Sec. 7.
Rison vs. Fair, 24 Ark., 161.
Cooley's Const. Lim. 64.
Thomas vs. Owen, 4 Md., 189.
Goetcheus vs. Matthewson, 61 N. Y., 420.
People vs. Conody, 73 N. C., 198.
Page vs. Allen, 58 Pa. St., 338.
Dills vs. Kennedy, 49 Wis., 71.
State vs. Baker, 38 Wis., 71.
Murphy vs. Ramsay, 114 U. S., 15.
McCrary on Elections, Sec. 9.
Monroe vs. Collins, 17 Ohio St., 665.
Patterson vs. Barlow, 60 Pa. St., 54.
State vs. Adams, 2 Stewart (Ala.), 239.

The constitution directs that satisfactory evidence shall be given the judges of the election that the voter had paid his poll tax for such preceding period as the legislature may prescribe. Now the act of 1890 was manifestly within the constitutional grant of power, because it followed the identical language of the constitution and simply declared that the judges of election should require satisfactory evidence that the voter had paid his poll tax, before allowing him to vote.

The term "satisfactory evidence," as used and employed in the constitution, had a fixed and well defined legal meaning, at the time of the adoption of the constitution, and it will of course be presumed that the term was employed and used with reference to its established meaning.

Thompson on Trials, Vol. 2, Sect. 2,464 says:

"Dr. Greenleaf, not speaking specially with reference to criminal evidence, uses the following language: 'By satisfactory evidence, which is sometimes called sufficient evidence, it is intended that amount of proof which ordinarily satisfies an unprejudiced mind, beyond a reasonable doubt. The circumstances which will amount to this degree of proof can never be previously defined; the only legal test of which they are susceptible is their sufficiency to satisfy the mind and conscience of a common man; and so convince him that he would venture to act upon the conviction in matters of the highest concern and importance to his own interests. * * The reader should be cautioned, however, that the expression 'satisfactory evidence,' and 'sufficient evidence,' are not the linguistic equivalent of the expression 'evidence which satisfies the mind beyond a reasonable doubt,' and cannot be properly substituted for it in explaining its meaning to a jury."

See also 1 Greenl. Ev. sec. 2.

These acts of 1891 undertake to add to the constitutional restriction of the right to vote, by placing upon these terms a construction not warranted, which imposes a qualification other than that authorized by the constitution, and beyond the proper and legal meaning of the terms therein employed.

B.

The acts of 1891 are in violation of Art. II, Sec. 2 of the constitution, providing that no persons belonging to one department of the government shall exer-

cise powers properly belonging to another.

Judges of election are judicial officers and belong to the judicial department of the government.

See Rails vs. Potts, 8 Hump. 225. Fleming vs. Coruns, 8 S. E. R., 237 (W. Va.)

The constitution, Art. 4, Sec. 1, says: "There shall be no qualification attached to the right of suffrage, except that each voter shall give to the judges of election satisfactory evidence that he has paid the poll taxes assessed against him, etc., etc.

It is competent for the legislature to enact rules of evidence, and say what shall constitute prima facie evidence, but it has no right to prescribe to or for any court or judicial officer what quantum of evidence shall be sufficient to amount to satisfactory proof of the point in issue.

The legislature has no right to prescribe a rule of conclusive evidence; by the acts of 1891 it has undertaken to say that a poll tax receipt shall be conclusive, and the exclusive evidence to satisfy the election judges that the voter had paid his poll taxes.

The constitutional qualifications of electors cannot be altered by statute, unless the constitution itself authorize such alteration, because an expression in the constitution of the conditions upon which a right may be exercised, or a penalty imposed, excludes by implication any change in such conditions by statuary enactment.

Paine on Elections, Sec. 7, and authorities cited.

When the constitution defines the circumstances under which a right may be exercised, the specification is an implied prohibition against legislative interference to add to the condition.

Cooley Const. Lim. 79.

The authority of the legislature to say what shall or shall not be received in evidence, and to say "which party shall assume the burden of proof in civil cases, is practically unrestricted, so long as its regulations are impartial and uniform, but it has no power to establish rules which, under pretense of regulating the presentation of evidence, go so far as to altogether preclude a party from exhibiting his rights."

Cooley's Const. Lim. p. 368.

This authority is quoted by Judge Lurton, in the case of Railroad vs. Crider, 7 Pickle, 498-499. The court in that case held the railroad fence law constitutional; the attack on it proceeded upon the idea that it made the appraisement mentioned conclusive evidence of the value of the stock killed; the reason assigned for holding the act constitutional was that it only made the appraisement prima facie evidence, and left the parties free to produce any other competent evidence on the question of value. The learned Judge said:

"If the valuation fixed by the board of appraisers was made conclusive evidence against the company, the act would be subject to severe criticism."

The non-payment of the poll tax is the thing which may disqualify a voter under the constitution. The acts under consideration operate to deprive a voter of establishing his right to vote, unless he produce the prescribed evidence, a poll tax receipt, or a duplicate, or an affidavit of the loss of the original. The original receipt is made the primary evidence; in its absence a duplicate, or an affidavit of loss of the original may be used. If the voter had in fact paid his poll tax for the prescribed time, and did not take a receipt, or if the trustee refused to give him a receipt, he cannot vote, notwithstanding he may be able to show by the most convincing proofs that he had paid the taxes. It is not provided that in the absence of a receipt, the voter may vote on an affidavit that he had paid his tax, but the affidavit must be that his receipt was lost or misplaced. The receipt, not the payment, is made the qualification.

If a voter had paid his tax and taken a receipt, which he entrusted to a friend for safe keeping, and which his friend refused to return to him, or if the friend was absent temporarily and had the receipt with him, he could not vote, even though one of the election judges was a witness to the fact that he had paid.

So, under the pretense of regulating the presentation of evidence of the payment of poll taxes, these acts may and in many cases will preclude a party who has paid his taxes and is entitled to vote, from exhibiting his rights to the election judges.

Again, these acts undertake to make a poll tax receipt conclusive evidence of the payment of the tax. The act of 1885, ch. 68, was held unconstitutional by the Federal Court, for the reason above stated.

There are many illustrations of the rule that one department of the government has no right to exercise a power belonging to another. The act requiring judges of the Supreme Court to give reasons for their decisions in writing has always remained a dead letter. The statutes providing that assignments of error in an appellate court shall not be required, was set at nought by our Supreme Court; and the act prescribing that where the judges of the Supreme Court were equally divided, a judgment of affirmance should be entered, was held unconstitutional.

So an act of assembly construing a former act, was held unconstitutional. See 5 Hump. 165.

An act directing the court to enter a particular kind of judgment in certain cases was held to be void.

The acts of 1891, in substance and effect, direct what construction shall be placed by the election judges upon the constitution and the act of 1890.

The constitution requires the voter to produce satisfactory evidence that he has

paid his poll taxes for such preceding period as the legislature may prescribe; the act of 1890 merely prescribes the preceding period for which the voter must show by satisfactory evidence that he has paid his taxes, and then come the acts of 1891, and, in legal effect say that Art. IV., Sec. 1 of the constitution, and chapter 26 of the extra session of 1890, shall be so construed that the satisfactory evidence therein mentioned shall be taken to mean an original poll tax receipt, or duplicate thereof to be issued by the trustee, or an affidavit of the voter showing inter alia that he has lost or misplaced his receipt.

C.

The second section of the act of March, 1891, is, by its express provisions, a direction of election judges how they shall construe the constitution and the said act of the extra session of 1890, for it says:

"That the words 'assessed against him' in the twelfth line of said act (these precise words being also found in the constitutional limitation on the subject) are hereby made to contemplate and mean the poll tax for the year or years named in the act, due by the voter and to which he is made subject under the revenue laws of this state, whether the name of the voter appears on the books of his county assessor or not." Section 4 of the act of Sept. 1891, is in the same language. This section does not profess to amend the former act, but declares what meaning shall be attached to certain terms therein employed. In other words, it directs the department of government to which the enforcement of the law is entrusted, what construction it shall put upon the act.

Speaking to this point, our supreme court says:

"With the highest respect for the legislature as a co-ordinate branch of the government, we are constrained to say that we regard it as clearly an unconstitutional enactment, and, whenever that is the case, it becomes the solemn duty of the judiciary so to declare it, as the constitution is the paramount law. The argument on this point may be stated in a few words:

"Under the constitution the powers of the government are divided into three distinct departments—the legislative, the executive and the judicial. Each department is prohibited from exercising any of the powers properly belonging to either of the others. It is upon this division of the powers that the security of the citizen, as well as limitations upon power contained in the constitution, mainly depend for their preservation. To the legislature belongs the power of making such laws, within the limits of the constitution, as the policy of society and its varying interests may seem to require. But, after their enactment, it is then the province of the judiciary to ascertain their meaning and determine upon their construction. Any other doctrine would destroy the checks contained in the constitution against the abuse of power, and tend to the concentration of all power in the single department of government.

"It is unnecessary to dwell on this point further than merely to say, the legislature of 1835 enact a law in reference to the collection of revenue; that of 1839-40, without repealing that law or enacting a different one, which it was perfectly competent for them to do, undertake to say what is the meaning of the former law, and decide upon its construction. This, we think, was beyond their power."

Governor v. Porter, 5 Hump., 165.

The second section of the act of March, 1891, and the fourth section of the act of September, 1891, manifestly add a qualification to the right of suffrage, in addition to the qualification prescribed in the constitution, in the face of the prohibition that there shall be no qualification to the right of suffrage, except that the voter shall give to the election judges satisfactory evidence that he has paid the poll taxes assessed against him for such preceding period as the legislature may prescribe.

The term "assessed" has a plain legal meaning. Under our system of revenue laws, we formerly had for every district a tax assessor, and now a county assessor, whose duty it is to assess against each inhabitant, between the ages of 21 and 50, a poll tax. The constitution declares that when such tax is assessed against a voter, he may be required when he comes to vote, to give the judges of election, where he offers to vote, satisfactory evidence that he has paid the taxes for such preceding period as the legislature may have prescribed. It contains no warrant for the legislature to say that he may be required to give evidence that the poll tax has been paid, when none had been assessed against him. The legislature simply went a step beyond the power conferred on it by the constitution, and we think the act is void for that reason.

D.

Again, we think the act of March, 1891, is unconstitutional and void, because it embraces more than one subject, and the subject is not sufficiently stated or indicated by the title. It purports to be an act to amend a former act, the title to which it quotes in the amendatory act. After undertaking to amend or construe the former act, which was an act merely prescribing that voters should be required to furnish to judges of election satisfactory evidence that they had paid the poll taxes assessed against them for the year next preceding the election, it proceeds to create a new criminal offense, namely, to make it a misdemeanor for a voter to vote without having first procured a poll tax receipt and exhibited it to the judges, and also makes it a misdemeanor for the judges of election to permit a voter to vote without the exhibition of his poll tax receipt.

Murphy vs. State, 9 Lea, 373; Ragio vs. State, 86 Tennessee, 272.

An act relating to a subject not embraced in its title is wholly void. Ibid.

E.

Our view that the law requiring certain specified evidence of the payment of

poll tax is nugatory and that it is so considered by the judges and the people all over the state, is strengthened by the fact that since the passage of the act of 1891, three important general elections and numerous special elections have been held; and, that although it is notorious that at all of said elections there was a general non-observance of its provisions, in most of the counties of the state, no prosecutions have been had for alleged violations of the law for mere non-observance of its provisions requiring certain specific evidence of payment. When a qualified voter has paid his tax, the fact that he did not produce a receipt was a mere technicality. The present contestant, Peter Turney, has approved our position by accepting and holding the office of Goverenor for the term of two years which expired Jan. 15, 1895, well knowing that at the election of 1892, the non-observance of provisions requiring the production of tax receipts to the judges of election, was almost universal, and well knowing that poll taxes were not in fact so generally paid for the year 1891 as they were for the year 1893. He accepted his election and enjoyed his office without question or complaint.

The acts of 1891 require, among other things, that their provisions shall be given in charge by the circuit and criminal judges to the grand juries at each term of their courts, and the grand juries are given inquisitorial powers. The Hon. E. D. Patterson, who has presided over the courts of the Ninth circuit ever since 1886, who was re-elected at the August election, 1894, for another term of eight years, and who was the choice of the democrats of said circuit, for re-election, and who is well and favorably known as a sound lawyer and able judge, in his recent charge to the grand jury of Lawrence county, said:

"The spirit of the law and the constitution is that a voter liable for poll tax shall pay the same before he votes, but an indictment based upon the failure of the voter to exhibit his poll tax receipt to the judges or give the evidence of payment set out in the election law of 1891, would be insufficient and must fail if the proof should show that the required tax had, in fact, been paid, because that part of said election law which undertakes to prescribe what shall be the only satisfactory evidence of payment of the required tax is unconstitutional."

To sustain the act of 1891 the majority cite at length from the report of a congressional committee in the Thrasher-Enloe case. The question of the constitutionality of the act never did come up and never was discussed in that case. The result in that case was not, as might be understood brom a reading of the majority report, reached by applying the rule which in the present case has been adopted by the majority. Enloe, the democrat, was seated and not Thrasher, the republican, and the concession spoken of by the majority as having been made to the republican candidate arising out of the application of the ruling on the poll tax law did not aid the latter. Congress simply seated Enloe, the democrat, and never did pass upon and had no occasion to pass upon the poll tax law requirements.

The majority also cite the unreported case of Bayless against the state, where the supreme court quashed an indictment for perjury upon a false affidavit of the loss of a poll tax receipt made before a justice of the peace. The court in short order threw out the indictment as bad, because the act says an indictment will lie for perjury where one swears falsely before an election judge, not before a justice of the peace. The question of the validity of the act was never reached by the court. The indictment was bad upon another vital ground and of course the court went no further.

V.

The Functions and Powers of the Joint Assembly.

The act of 1891, being, in our opinion, void for want of conformity to the constitution of the state in the respects above set out, the question recurs, What is the prerogative and duty of this joint assembly in the premises?

We concede that one legislature sitting in its legislative capacity has no power to declare unconstitutional an act of its predecessor. The remedy in such cases is to repeal the obnoxious statute. But the two houses of the general assembly are not sitting in a legislative capacity; we are here to exercise a high and important judicial function; we are the constitutional judges of the controversy now pending as a judicial question, between two gentlemen, each claiming to have been elected to the office of Governor of this commonwealth. We are neither acting in a political nor in a legislative capacity. We are pro hac vice a part of the judiciary of this state. We are upon all questions of law and fact the court of dernier resort. We constitute the supreme tribunal for the trial of this great controversy. There is no tribunal which can exercise any appellate or revisory power over the judgment which we may render, either upon the law or the facts arising in the cause. we may render, either upon the law or the facts arising in the cause.

The constitution says:

"Contested elections for Governor shall be determined by both houses of the general assembly in such manner as shall be prescribed by law." Article 3, section 2.

The action of the two houses in deciding upon this contest is absolutely judicial in its nature, as much so, to all intents and purposes, as if the constitution had provided that contested elections for Governor should be tried by the supreme court.

Cushing's Legislative Assemblies, Ed. 1874, Ch. 4. p. 255, is as follows:

Section 640. "The powers incidental to a legislative assembly are such as are necessary to enable it to perform its principal or legislative and administrative functions. These powers are of two kinds, the inquisitorial and the judicial."

Section 642. "The other incidental powers of legislative assemblies, being more strictly analogous to those exercised by judicial tribunals, constitute its judicial powers as distinguished from its legislative; and accordingly, in the exercise of these functions, a legislative assembly is considered as a court, and the journal of its proceedings as a record."

Section 643. "The judicial powers exercised by a legislative assembly as incidental to or in aid of its general functions, must be carefully distinguished from those which it exercises as a branch of its legislative duties."

Section 649. "The jurisdiction of a legislative assembly acting judicially is necessarily final. That is, its proceedings cannot be revised nor its judgment suspended by any other court or tribunal.

Wirts vs. Rogers, 28 Atlantic Rep., 735 (New Jersey. McCrary Elect., page 394.

And from Cooley we quote: In determining questions concerning contested seats the house exercises judicial power, but generally in accordance with a course of practice which has sprung up from precedents. Const. Lim., 158.

They are to decide the question involved, determine who was elected Governor, keep a journal of their proceedings, etc.

No jurisdiction whatever is conferred upon any other tribunal in a contest involving the title to the office of Governor. The courts, it would seem, have no jurisdiction by a proceeding in the nature of quo warranto, mandamus or other form of procedure over a case involving a contest like this.

If a question of constitutional law arises in a contest over the office of Governor, the two houses of the general assembly, from the necessity of the case, must be the final arbiters of the question. As applied to the office of Governor, the question can never arise before any of the ordinary judicial tribunals, because they cannot exercise any jurisdiction over the subject matter. Can it be said that we must sit by and see the Governor-elect deprived of his office under an unconstitutional law because that law has not heretofore been declared unconstitutional by the supreme court?

We think that this joint assembly, constituted a court of last resort to try this issue, manifestly has the right and power to pass upon and decide the constitutionality of the act under consideration, and it is our solemn duty, emphasized by the oaths we have taken, to declare the act void, if in our judgment it violates the fundamental law of the state.

The Contestant Turney, while occupying a seat upon the bench of the supreme court of this state, in delivering the opinion in Lynn vs. Polk, 8 Lea, 130-131, thus spoke of how an unconstitutional law is to be regarded:

"If the mandates of the constitution are to be observed, there is not, nor can there be such a thing as an officer of the state acting by authority of the state in pursuance of an unconstitutional law. If the officer or his office are created by the unconstitutional exercise of power or the exercise of power not conferred by the constitution, the first is a violation of power, the second its usurpation. A law unconstitutional is void, and confers neither right nor authority. Officers created by it are wrong-doers whenever they attempt its execution.

"I am compelled to confess my utter incompetency to comprehend the reasoning upon which it has been holden that unconstitutional enactments may be, or must be treated as authority of the state. To my mind, it is the climax of absurdity."

This is the universal doctrine.

By eminent text writers, supported by the highest authority it is thus stated:

"An unconstitutional act is not a law; it confers no rights, it imposes no duties, it affords no protection, it creates no office; it is, in legal contemplation, as inoperative as though it had never been passed."—Am. and Eng. Ency., 3 Vol., 678.

VI.

Nature of the Right of Suffrage.

While the right of suffrage does not belong to the class of rights, like the right of life, liberty, and property, known as inalienable rights, which exist in favor of every person, as an attribute of manhood, and which do not depend for their origin and existence upon the constitution and laws, but which are above and beyond all constitution and laws; while this right is one which depends for its existence and enjoyment upon the constitution of the state, and while the state may by its constitution grant or withhold the right to or from any class of its citizenship that it may choose, subject only to the prohibition of the federal constitution, still it is a right of the highest value and concern to the citizen. Chief Justice Waite, in a famous case, said:

"It is the highest right of the citizen, because it is preservative of all other rights."

It is the only resource in the hands of the people to protect and preserve all their other rights and privileges from encroachment by the rich and powerful. Hence it is a matter of the supremest importance to the citizens of this commonwealth that this, their great constitutional privilege, be not taken from them, or its results, as expressed at the ballot box, be not annulled upon any pretext whatever. This great right of the people of the state is as much involved in this controversy as is the right of these contesting parties

to the high office for which they are contending. It is a matter of the greatest importance to determine in what capacity the legislature is to act in determining the controversy.

Is this a mere political body, assembled to hear and determine a political controversy, upon the lines suggested by our party fealty? Or do we assemble in the capacity of judges to pronounce a judicial award, upon the principles of right and justice to the people, and to the litigants, and in accordance with our oaths and our judgment, upon the constitution, the law and the facts bearing on the case?

The contest act says in its 12th section:

"The members of both houses shall then assemble and consider the report and determine the election. They shall decide the questions involved, pass upon the objections, determine the contest, and determine what person received the highest number of legal votes, and declare and determine who shall be elected Governor of Tennessee."

It appears to be plain from this act, as well as from the constitutional provision on the subject, that the function of the general assembly is a judicial one. They are to decide the questions involved, the constitutional and legal questions, as well as those relating to the facts. They are to say what is a legal vote and what is an illegal one; they are to determine who has been elected Governor of Tennessee. They have as much power to pass upon and determine the constitutionality of an act of the legislature, upon which the decision of any question in the case turns, as they have to decide the questions of fact involved. This case involves the right of the people to enjoy their suffrages; it involves the preservation of their suffrage from destruction upon frivolous pretexts.

The bill of rights at section 5 declares:

"That elections shall be free and equal and the right of suffrage, as herein declared, shall never be denied to any person entitled thereto, except upon conviction, by a jury, of some infamous crime, previously ascertained and declared by law, and judgment thereon by a court of competent jurisdiction."

The framers of the constitution apprehended that some men might at some time put forward the claim that the bill of rights was not as sacred as the body of the constitution, and hence by the seventeenth section to the miscellaneous provisions found in Article 2, they declared:

"The declaration of rights heretofore prefixed, is declared to be a part of the constitution of this state, and shall never be violated on any pretense whatever. And to guard against the transgression of the high powers we have delegated, we declare that everything in the bill of rights contained is excepted out of the general powers of government, and shall forever remain inviolate."

Each member of the senate and house of representatives is required to take an oath to support the constitution of the United States, and of this state, and also the following oath:

"I do solemnly swear (or affirm) that, as a member of this general assembly, I will, in all appointments, vote without favor, affection, partiality or prejudice; and that I will not propose or assent to any bill, vote or resolution, which shall appear to me injurious to the people, or consent to any act or thing whatever that shall have a tendency to lessen or abridge their rights and privileges as declared by the constitution of this state."

In view of the duties made incumbent upon the general assembly by the contest act of 1895, can the members shut their eyes to the fact that they are to sit as judges upon rights and privileges declared in and guarded by the constitution? Can they forget that they took a solemn oath to support the constitution, that they would not propose or assent to any vote injurious to the people, or consent to any act or thing whatever that would have a tendency to lessen or abridge their rights or privileges?

From the necessity of the case, the vote of the members on this contest involves a decision by them of the question of the constitutionality of the poll tax receipt law, and they must decide it upon their oaths. Shall it be said that they, fresh from their oaths to support the constitution, must vote that when an elector, otherwise qualified, voted without showing his poll tax receipt, that his vote is to be rejected because an act of the assembly, which in their hearts and enlightened judgments they believe is unconstitutional, has said that the voter must produce his poll tax receipt when he votes? They have never taken an oath to support an unconstitutional law.

We are mindful of the rule of law that where the judicial department of the government has construed a law, it is the duty of the other departments to follow the construction put upon the law by the courts, but, in the language of the late Justice Miller, "It is the duty of each member of the legislature to make that construction himself, whenever, in the absence of judicial construction, he is called upon to act, within the sphere of his duty."

That eminent jurist, in his lectures on the constitution, pages 98 and 99, says:

"It is certainly the special function of the courts to construe the constitution, in a judicial proceeding, with parties properly before it, but it is equally the duty of each member of congress, as well as the executive, to make that construction himself, whenever he is called upon to act within the sphere of his duty upon any matter involving a question of constitutional law."

"It is also true that such member (or executive) is bound to consider that in the execution of the law as between parties, all other branches of the government must yield to the interpretation declared by the courts; yet, when the question is addressed to his conscience as to whether he can vote for a proposed measure (or sign a certain bill which is presented to him), IT IS FOR HIM TO DECIDE, WITH THE BEST LIGHTS BEFORE HIM, WHETHER THE MATTER IS WITHIN THE CONSTITUTIONAL POWER OF THE BODY OF WHICH HE IS A MEMBER."

VII.

Laws to Secure Purity of the Ballot.

The validity of the poll tax receipt law is sought to be maintained under the last clause of Art. 4, Sec. I., which declares that the general assembly shall have power to pass laws to secure the freedom of elections, and the purity of the ballot.

To this contention there are two conclusive answers:

1. The tax receipt act imposes qualifications upon the exercise of the elective franchise forbidded by the constitution. It is not competent for the legislature, under the pretense of securing the freedom of elections and the purity of the ballot, to impose qualifications to and restrictions upon the right of voting, prohibited by the constitution. The legislature may regulate the manner of voting, but may not impose unwarranted qualifications upon the right itself, as they attempted to do by these acts.

2. The acts themselves were not designed to secure the freedom of elections and the purity of the ballot, and it can never have that effect. It has opened the doors to more fraud and corruption in elections than any laws ever enacted in this state. It has put it into the power of unscrupulous persons to buy the votes of the people who are unable or unwilling to pay their poll taxes. One receipt is often made to do duty many times, and for many different persons in the same election, thus working a fraud upon the revenues of the counties. High officials in good counties have used this law for the perpetration of the grossest frauds upon the right of free elections and pure ballots. It has made it necessary for candidates and their coadjutors to purchase receipts in large numbers, and to use them in bribing voters to support them and their friends. So great has been the tendency to corruption of the ballot since this law was passed, that many persons, before considered honest and patriotic, persons who are fully able to pay their own taxes, will not vote unless some candidate presents them with the necessary tax receipts, and they of course always agree to vote for the man whose money has paid their taxes.

It is an insidious and dangerous enemy to free elections, and corrupts the purity of the ballot box. It is a misnomer to call this a law to secure freedom and purity in elections. You could just as appropriately call a law to legalize bribery in elections one to secure free and pure elections. Already the public journals of this state have recorded an awful tragedy and suicide as the result of these corrupt influences which have been at work in popular elections, under the operation of this poll tax receipt law.

VIII.

Poll Tax Provision Intended to Secure Revenue for School Purposes.

We think the prime object of the constitutional provision creating the poll tax limitation or qualification upon the right to vote, was to require all persons to contribute to that part of the revenue which was set apart and dedicated to the common schools, and hence legislation should concern itself more in securing the payment of the tax, than in the matter of the evidence of its payment.

The contestant, Turney, in only one instance complained of the non-payment of poll taxes; the burden of his complaint was that poll tax receipts were not required by the election judges to be produced at the time the voters voted. The investigation of the committee in East Tennessee was confined to that one subject, and in all the counties of East Tennessee the contestee, Evans, offered to prove and sought opportunity to prove, that the poll taxes had been in fact paid. The sub-committee shut the door of investigation to this inquiry. As to each of the counties to the vote of which the contestee, Evans, objected, he presented an objection that the poll taxes had not been paid; he sought opportunity to make good his charges by proof, but the door of investigation was closed on him.

It is charged in Contestee Evans' petition that more poll tax revenue was collected for the year 1893, than had ever been collected in any previous year of the history of the state. This averment is not denied, and, therefore, according to an express provision of the contest act, is to be taken as admitted.

Now is this general assembly prepared to say that votes cast for Contestee Evans by parties who had paid their taxes, are fraudulent and illegal merely because the election judges failed to demand the production of the poll tax receipts?

Are they prepared to say that the contestee, Evans, has been accorded a full and fair investigation when he was denied the right of proving in the several counties objected to by him that the taxes had not in fact been paid?

The investigation was very much restricted and limited as to the territory embraced within its scope, but enough was shown to enable us to state with certainty that the method of voting without the production of poll tax receipts was not peculiar to republican localities, or to republican voters. The same conditions existed in every portion of the state alike in this matter.

In sections of the state, where, from the returns, republicans do not abound to any large extent, and where the voice of the republican orator is never heard, people, by common consent of voters and election officers, voted without showing poll tax receipts. No candid man will deny the truth of this statement, nor can it be denied that if the sections of the state as to which Contestee Evans filed objections had been investigated with the same energy and desire on the part of the committee

to find irregularities as was displayed in the counties objected to by contestant, it would have resulted in showing a much greater loss to Contestant Turney, upon his interpretation of the law than to Contestee Evans.

As to the voting precincts where many of the members of the general assembly voted in the election, it is clearly shown that poll tax receipts were not demanded or shown, and it is a fact well known that some distinguished members of this assembly, within the poll tax paying age, voted without showing their poll tax receipts or duplicate of the originals or filing affidavits. All the members derive their title from the very same elections involved in this controversy. Now are we to say that these distinguished members of this assembly committed a fraud upon the laws and revenues of this state, when they voted without showing their tax receipts? Shall we by our vote impugn the title of members of this assembly to the offices they are now holding?

The position taken by Contestee Evans in his answer on this question is as follows:

"Contestee Evans protests against Contestant Turney's construction of the poll tax laws and says, that the action of the judges of election in allowing a person to vote, is prima facie evidence that he was legally entitled to vote, and such vote cannot be declared illegal and thrown out, except upon evidence showing that, as a matter of fact, the voter had not paid his poll tax. A mere showing that the judges received the vote without requiring a certain kind of evidence of payment of poll tax would simply show that the judges were derelict in not observing the statute prescribing the sort of evidence upon which they should act; but this course on their part (even if the statute was constitutional and binding upon them) could not and should not invalidate and render illegal the vote of a person constitutionally and legally entitled to vote. To throw out or reject a vote in a contested election suit, it must be shown that the person casting it was not, in fact, a legal voter. The failure of the judges to require a particular kind of evidence of the fact of poll tax payment could not and does not alter the fact that the voter had a legal right to vote; otherwise, the negligent or willful omission of the judges to call for the statutory evidence would disfranchise the voter or invalidate his vote if cast; a proposition too monstrous to be true."

In this exposition of the law we concur. In our opinion the legislature never intended and the constitution does not permit that the rights and privileges of the elective franchise should be restricted and voters be disfranchised simply because the judges of election did not require the production of certain specified evidence of payment of the tax, but rested satisfied with obeying the constitutional provision that "satisfactory evidence" shall be given to the judges.

IX.

The Record.

The printed record of the proof, as reported to the general assembly, sets out at many places exceptions taken by counsel for the contestee to the rulings of the sub-committees at the time evidence was taken, and also numerous requests for witnesses which were refused. To such rulings, exceptions, requests and refusals as appear in the record we call attention without setting them out in detail. But it deserves to be noticed that many material and important exceptions, many requests for material witnesses with a statement of what was expected to be proved by them, and many other important matters, all of which form part of the record, have not been printed. We cannot undertake to enumerate all of these omissions, but will state that in the districts where there was investigation, upon proof being made by Contestant Turney that the judges of election did not require the statutory evidence of the payment of poll taxes, request was made for witnesses to prove or proof was actually offered by Contestee Evans that voters had in fact paid their poll taxes.

X.

Conclusion.

That great writer on constitutional law, Judge Cooley, says:

"An election honestly conducted under the forms of law, ought generally to stand, notwithstanding individual electors have been deprived of their votes, or unqualified voters have been allowed to participate. Individuals may suffer wrong in such cases, and a candidate who was the real choice of the people may sometimes be deprived of his election; but, as it is generally impossible to arrive at any greater certainty of result, by oral evidence, public policy is best subserved by allowing the election to stand and trusting to a strict enforcement of the criminal laws for greater security against like irregularities and wrongs in the future."

Cooley, 782.

So far as the charges of Contestant Turney go, they stand almost alone upon alleged violation of the poll tax law in the non-production of statutory evidence, which is merely technical, not affecting the actual qualification of the voter. If the acts of 1891 are treated as they must be treated, as unconstitutional and void, his whole case falls to the ground. No actual fraud was committed against him; he has not been deprived of a vote to which he was entitled, and doubtless received as many votes as Contestee Evans from persons who did not produce their tax receipts; but, as has been fully shown, the majority of the committee has precluded Contestee Evans from fully showing the fact. No disturbances or acts of violence occurred and the proof is cumulative from both democratic and republican sources that the last Governor's election was as fair as any that has been held in Tennessee for many years. The only frauds and wrongs shown were those perpetrated against Contestee Evans and by which the contestant profited. In certain counties large numbers of

votes actually and honestly cast for Contestee Evans and for Hon. A. L. Mims for Governor were corruptly counted for Contestant Turney. Appalling frauds were committed in Lauderdale, Fayette and some other counties, subverting and reversing the will of the voters. In many precincts voters were not allowed to witness the voting or the counting; they were required to hand their ballots in at windows and apertures in dark rooms, and, in one instance, in a wooden booth set on wheels, so high that it was impossible for them to see the ballot box or know what became of their ballots after they were handed to the officer; in such cases all the officers of the election belonged to the political party favoring the election of contestant, or, if representation from another political party was allowed, a person who could neither read nor write was selected to provide against detection of frauds; and the counting of the votes was conducted behind closed doors, the electors being denied admission. Fictitious names, names of deceased persons and non-residents, and of persons who did not attend the election or vote were placed on the poll lists as having voted. By the fraudulent count, clandestinely conducted, it was made to appear and certified by the officers of election that Contestant Turney received not only the votes of all the fictitious, dead and non-resident names on the poll lists, but many hundreds of votes actually and honestly cast against him. Evans and Mims votes were converted by the legerdemain of the counting into Turney votes. It is unnecessary to go into details; the facts are fully shown, and no effort was made to contradict them. Lauderdale county may be taken as an illustration: At one precinct, where the total vote was 175, Evans received at least 102 and Mims 3 votes; yet the fraudulent count gave Turney 168, Mims 7, and Evans none. At another 322 names appear on the poll list; at least 28 votes were cast for Evans, and at least 16 for Mims; yet 318 votes were counted for Turney, Evans being allowed none and Mims only 5. And at this precinct 318 votes were counted for the entire democratic ticket, although it was admitted by prominent democrats that they scratched and did not vote the straight ticket. At another precinct in the same county, where the poll list contained 169 names, Evans received at least 53 votes and Mims 6, yet Turney was allowed 127, Mims 6 and Evans only 36 votes in the fraudulent count. At still another precinct the returns were corruptly made to show that Turney received 124 votes, Evans one vote and Mims 48 votes, when, in fact, at least 105 of the 172 votes polled were actually and honestly cast for Mims, and not exceeding 66 votes could possibly have been cast for Turney. No effort was made to contradict these facts: the officers of election were not even put upon the stand.

The evidence taken in Fayette county and the ruling of the majority thereon offer food for suggestions of a most astounding character. The charges of Contestee Evans to this county will be found on pages 95 to 102 of the book of pleadings. The grossest frauds and violations of election laws were charged. As to several districts of the county it was proven beyond a reasonable doubt by many individual voters whose testimony is not impeached that they had voted for Contestee Evans. But the proof shows that not 10 per cent. of such votes were counted by the election officers for Evans and the balance were added to the Turney vote. The only contradiction of such most conclusive proof is made by the evidence of election officers, who testify that the election was fair and the vote was counted right. To illustrate, in the Fourth civil district 105 witnesses swore positively that they voted for Evans. A prominent and highly respected citizen, whose testimony is unimpeached and unimpeachable, swore that he furnished these voters Evans tickets. Two election judges testified that they counted the vote correctly. Similar testimony was made in several other districts. The majority of the committee, by a process of reasoning which we cannot follow or concur in, chose to credit the two election judges in preference to the corroborated testimony of the individual voters. The same conditions existed in the Somerville precinct, at which two of the judges of election were ignorant colored men. The district is a large town inhabited by many intelligent and educated people. The vote referred to should have been deducted from Turney and counted for Evans. This, our conclusion, is fully borne out by the charge of his honor, the present justice of the supreme court of the United States, Howell E. Jackson, to the jury in the case of United States vs. Carpenter, 41 Federal Reporter, 330, tried in 1889, where Fayette county election judges had been indicted and where the facts proven were almost identically the same as those shown in the November election in Fayette county. As to two of the districts contestant substantially admits the charges made. (Record, pages 1123-1260.)

Can it be that members of this honorable body, charged with the duty of doing justice between the litigants, will shut their eyes to these glaring frauds against the contestee, and see only the insignificant technicalities relied upon under an unconstitutional law by the contestant? Are these frauds to be given effect and rewarded, or shall the purity of the ballot box be defended and protected?

The people in their sovereign capacity have spoken out in no uncertain tone. Their verdict at the ballot box was that the Hon. H. Clay Evans should be Governor of Tennessee; that verdict has been

returned in the proper and legal way to the speaker of the senate. If all the votes honestly cast for Mr. Evans had been honestly counted for him his plurality would be much greater than shown by the returns.

We earnestly recommend that the will of the people be carried out; that the contest be decided in favor of Mr. Evans and that he be promptly inaugurated Governor of Tennessee.

Respectfully submitted.

JAMES JEFFRIES,
W. J. HODGES,
SAM P. ROWAN,
JNO. W. STONE,
L. C. KEENEY.

THE EXCEPTIONS

FILED BY COUNSEL

for

Mr. EVANS.

Peter Turney, Contestant, vs. H. Clay Evans, Contestee, Feb. 25, 1895.

Exceptions to the Actions and Rulings of the "Committee on Governor's Election," appoined by the General assembly of Tennessee.

And now comes Contestee Evans, and, protesting as heretofore against the constitutionality and validity of the contest law of Jan. 29, 1895, he excepts to the rulings and decisions of the "committee on Governor's election" appointed under the sixth section of said act.

For grounds of exceptions he says:

1. By the ninth section of said act it is provided that "the pleadings and objections shall be referred to the committee" and that "the committee shall take evidence and consider and report on the objections to the speaker of the senate;" and by the nineteenth section it is provided that "when the report is made the two houses of the general assembly shall consider the report, determine the election * * * decide all questions involved, pass upon the objections and determine the contest."

The Committee Cannot Decide Anything.

These provisions clearly express that the general assembly is to finally consider, pass upon and determine all questions as to materiality and relevancy of issues and of proof offered, and upon all questions of law and fact which may arise upon the pleadings or upon the evidence; but that the committee has power and jurisdiction only to "hear and consider," not "hear, finally pass upon and determine" upon any of said matters. Contrary thereto the committee has, as appears from the record of its proceedings here referred to, undertaken to finally eliminate from the pleadings and from consideration many and weighty charges and specifications; and by doing so, and by peremptorily directing its sub-committee to take, hear and receive such evidence only as by it is determined to be material and relevant and to take no other evidence, and none upon the pleadings by it eliminated, the committee is depriving the general assembly from obtaining knowledge of all the facts connected with the election of Nov. 6, 1894, as set out in the pleadings, and from determining the contest upon its merits.

2. The contest act contemplates that the contestant and the contestee shall make up the pleadings and the issues and that the committee shall hear and take and report upon proof upon the pleadings and issues thus made up by the parties; while the committee has undertaken to cut out of and remove from the pleadings many issues on material matter and has directed its sub-committees not to hear and not to receive any proof which may be offered on such parts of the pleadings and issues thus cut out and removed.

3. The committee has by its rules determined that no proof shall be taken, either by way of depositions in the manner recognized by the courts of the country or by its sub-committees or otherwise, on any of the questions raised in the pleadings which the committee has considered and adjudged immaterial or insufficient, as shown by its record, which is referred to; thus depriving the general assembly from having before upon the final trial of the contest, the facts of the election of the 6th of November, 1894, which are the subject of the contest.

Suppressing Proper Proof.

4. The committee has refused to inves-

tigate whether a voter had in fact paid the poll tax for which he was liable, in all cases where the sole issue in the pleadings is based upon non-production or failure of the judges of election to require production of poll tax receipts, duplicates or affidavits of loss of receipts, The committee is thereby preventing the fact of the actual payment or non-payment of the tax to be laid before the general assembly, and is thus subordinating the great fact of payment to the mere technical inquiry into observance or non-observance of certain specific rules and regulations as to evidence of payment.

5. By its rulings on the poll tax question that evidence of payment is not proper or admissible when it is shown that receipts, duplicates or affidavits of loss were not required to be produced, the committee has undertaken to set aside that clause of the constitution which points to the judges of election as the tribunal to whom satisfactory evidence of the payment of the poll tax shall be made by the voter. The general assembly, in order to intelligently judge and decide who is a legal voter, should have before it the facts as to whether or not a voter paid his poll tax in addition to the facts as to production or non-production of statutory evidence of payment.

6. By the action of the committee in arbitrarily determining the itinerary of the sub-committees and appointing the time for the hearing of evidence in the various counties, the course of preparations for taking the testimony has been materially interrupted, and especially in some of the counties first to be taken up, rendered exceedingly difficult, if not altogether impracticable.

7. By prescribing that no subpoenas for witnesses shall issue except upon written application stating the questions of fact upon which the witnesses shall be examined and what their testimony is expected to be upon those questions, the committee has established an unnecessarily harsh rule, which is utterly impracticable for the purposes of a full and fair investigation.

8. By declining to provide for stenographers, although the contest act especially confers authority, the committee deprives the general assembly of the benefit of an examination of the full and entire testimony to be taken.

An Unreliable Rule.

9. The rule based upon the United States census of 1890 as applicable to determine the average age of voters in the election of 1894 is arbitrary and misleading, the testimony based upon this rule is unreliable and the rule admits of secondary evidence of fact which is easily susceptible of proof by primary evidence.

10. The contest act, as well as the constitution, recognize the county as a unit in the Governor's election. The charges of the petition of Contestant Turney are almost exclusively based upon allegations of conspiracy among republicans to violate and not observe that provision of the election laws requiring production of evidence of payment of poll taxes. The committee has ruled that where the petition charges such violation in certain republican districts in a county objected to, even where the answer sets up like irregularities in other specified democratic districts, no proof is admissible as to these latter districts. The rule to exclude such proof destroys the constitutional unit of the county, while at the same time, opportunity is not given to disprove the charge of conspiracy among republicans by showing that the election in all the districts of the county, democratic and republican, was held alike, and the poll tax laws observed or not observed alike by republicans and democrats.

Republican Conspiracy Refuted.

11. The petition of Contestant Turney charging a conspiracy among republicans not to observe the provisions of the poll tax laws in certain republican counties, the committee erred in refusing to allow proof to be made going to show that in most of the counties of the state, democratic and republican alike, and in most of the voting precincts of the state outside of the cities the poll tax laws as to the production of evidence were observed or not observed alike, and were construed alike by the people all over the state. This character of proof should have been admitted, not for the purpose of throwing out votes in the counties not especiallly objected to in the answer, but to meet the charges of conspiracy by evidence which is considered competent in such cases by the courts of the country. The averments to the answer, among others, on this subject which were ruled out by the committee are as follows:

Contemporaneous Construction.

In this connection, contestee says that, as he is informed and believes, in many democratic counties and voting precincts, others than those heretofore and hereinafter objected to, in fact, in all the rural districts of Middle and West Tennessee, where Contestant Turney received majorities, a compliance with the provisions of the statutes as to a certain manner in which evidence of payment of poll taxes should be made to the judges of election was not had. He will be prepared to prove his allegation, and he insists upon it, so as to show that the construction of the poll tax laws by the people of said districts and voting precincts of Middle and West Tennessee was uniform, and so as to show further, that if the investigation as to the non-compliance with the merely technical violations of law—charged by Contestant Turney, as to republican counties and districts—is to be limited to such districts and counties, when the same existed in democratic counties and districts which gave Contestant Turney majorities, and without which he would not have received as many votes as were cast for the Hon. A. L. Mims, necessarily follows,

that said Contestant Turney would be the beneficiary of the very same violations of law and irregularities of which he himself complains in regard to republican counties and districts exclusively.

Omissions.

In the following districts of counties objected to by Contestant Turney, which gave democratic majorities, or majorities for Contestant Turney, he carefully avoids making any objections on account of noncompliance with the poll tax law and other alleged irregularities, viz:

Cocke County—First, Eighth and Sixteenth Districts.

Campbell County—Twelfth District.

Crockett County—Second, Third, Fourth, Ninth and Twelfth Districts.

Greene County—Eighteenth and Twenty-fourth Districts.

Hawkins County—Fifth, Ninth and Sixteenth Districts.

Carter County—Eighth District.

Claiborne County—Fourth, Seventh and Eighth Districts.

DeKalb County—First, Fifth, Sixth, Seventh, Ninth, Eleventh, Fourteenth, Seventeenth, Twenty-first and Twenty-second Districts.

Grainger County—Second and Eleventh Districts.

Hamblen County—Fourth and Fifth Districts.

Macon County — Fourth, Eleventh, Twelfth and Thirteenth Districts.

Morgan County—Fourth District.

Rhea County—First precinct of Second District; Fourth, Fifth, Sixth, Ninth and Fourth Districts.

Union County—Third District.

But Contestant Turney confined his objections in said counties to complaints against the districts thereof which gave majorities for Contestee Evans. Contestee insists that if he is to lose votes by contestant's construction of the poll tax law in the districts challenged, he should also lose the votes of those voting for him in violation of his construction of the law.

12. The cross petition of Contestee Evans charges that in the following counties large numbers of voters voted for Contestant Turney without having paid the poll taxes for the year 1893 for which they were liable, to wit: In the counties of Cannon, Chester, Clay, Coffee, Dickson, Gibson, Grundy, Hardeman, Haywood, Henry, Humphreys, Lauderdale, Lincoln, Madison, Marshall, Maury, Putnam, Overton, Moore, Rutherford, Wilson, VanBuren, Robertson, Sequatchie, Sullivan, Sumner, White.

There is, under the head of each of the said counties in the cross-petition, a special charge to the effect that many voters so voted for Contestant Turney without having paid the poll taxes. For example as to

White County.

In said county Contestant Turney received 1,302 votes; as many as 800 of the persons who cast said ballots being liable for the poll tax of 1893, and not having paid the same prior to said election."

Giles County.

"That of the 1,033 votes then and there cast for Contestant Turney, more than 1,000 were cast by persons liable for the poll tax for the year 1893.

"That of such voters so liable for such poll tax, a large number (the exact number being to your contestee unknown) had not in fact paid such poll tax, but were nevertheless allowed to vote for Contestant Turney, without producing the evidence required by the statute that they had paid said poll tax."

Franklin County.

"That the returns from Franklin county, opened and published by the speaker of the senate, show that Contestant Turney received 1,476 votes, Contestee Evans 595 and Hon. A. L. Mims 798 for Governor; and of the 1,476 votes then and there cast for Contestant Turney, at least 900 were cast by persons liable for poll tax. A large number (the exact number being to your contestee unknown, but will be shown in the evidence) had not paid poll tax for 1893, but were nevertheless allowed to vote for Contestant Turney and their votes were so counted and embraced in said returns."

Cheatham County.

"That of the 829 votes then and there cast for Contestant Turney, at least 500 were cast by persons liable for the poll tax for the year 1893.

"That of such voters so liable for said poll tax, a very large number (the exact number being to your contestee unknown, but will be shown in the evidence) had not in fact, paid such poll tax, but were, nevertheless, allowed to vote for the Contestant Turney, and their votes were so counted and embraced in said returns."

The above are the illustrations of the charges made as to each of the twenty-seven counties hereinbefore named specifically; but as to none of said charges does Contestant Turney's replication contain a special denial. Yet there is a single general denial on page 159 in the following words:

"The contestant, answering the charges of contestee's cross-petition, that votes of contestee's cross-petition, that votes were cast and counted for contestant which were illegal by reason of the voter not having paid his poll tax, or by reason of his failure to produce his poll tax receipt or any other statutory evidence of payment, as the election law prescribes, says contestant does deny that any considerable number of votes were cast for him by parties who had not paid their poll tax."

While this denial is general and evasive and contestee was entitled to a pro con-

fesso on all the charges made above as to all the counties named, yet Contestant Turney presented it as an issue; nevertheless, the committee refused to treat it as such, and the charges are all eliminated and no proof is to be received or taken on any of them, notwithstanding they involve the great fact of non-payment of poll taxes by voters in twenty-seven counties.

13. The cross-petition of Contestee Evans contains as to at least twenty counties allegations like the following or substantially like the following:

Lincoln County.

"That of the 1,720 votes then and there cast for said Contestant Turney, at least 1,200 were cast by persons liable for poll tax for the year 1893.

Said voters so liable for said poll tax were not required to produce, and did not in fact produce, to the judges of the election, at the several precincts, districts and voting places of said county, any statutory evidence that they had paid poll tax, but their votes were, nevertheless, received and counted for the Contestant Turney.

"In the Third District of said county, in the Fifth District, at both precincts, in the Seventh District, in the Thirteenth District and in the Seventeenth District Contestant Turney received more than 100 votes which were illegal upon the ground of non-compliance by the voters and election judges with the poll tax laws of this state, and because the voters liable for a poll tax did not produce the required evidence of the payment thereof."

Maury County.

"Of the 2,043 votes then and there cast for said contestant, at least 1,000 were cast by persons liable for poll tax for the year 1893.

"Said voters, so liable for said poll tax, were not required to produce, and did not in fact produce, to the judges of election at the several precincts, districts and voting places of said county, except in the town of Columbia, any statutory evidence that they had paid said poll tax, but their votes were nevertheless received and counted for the contestant."

Madison County.

The returns from said county, as opened and published by the speaker of the senate, show that the contestant received 2,556 votes, your contestee 584 votes and A. L. Mims 462 votes for Governor. Of the 2,556 then and there cast for said Contestant Turney, at least 1,500 were cast by persons liable for the poll tax of the year 1893.

The democratic judges of said election, in all the districts and voting places of said county, allowed democrats to vote who had not paid their poll tax, and also allowed other democrats to vote who did not furnish evidence as required by law of the payment of poll taxes; although all of said voters were liable to said poll tax. All of said democrats so illegally allowed to vote at each of said voting places voted for Peter Turney for Governor, but contestee cannot now state the exact number of said illegal votes in each of said precincts.

Erorneous Rulings.

The committee erroneously ruled upon the above charges as to Lincoln county not to admit proof except as to 3d, 5th, 7th and 17th districts, and excluded proof as to all other "precincts, districts and voting places" of Lincoln. And it excluded proof altogether as to the allegations set out concerning Maury and Madison.

And under this same ruling upon like or substantially like allegations, the committee erroneously excluded all proof concerning non-production of evidence as to all of Fayette county except one district, all of Dyer county except one district, all of Franklin county except two districts, all of Grundy except three districts, all of Hardeman except one district, all of Lauderdale and all of Putnam except two districts, all of Wilson except two districts, all of White except five districts, all of VanBuren except three districts, all of Henry except three, all of Madison and Maury, all of Cannon except two districts, all of Clay except two districts, all of Coffee except one district, all of Sumner except four districts, all of Tipton except two districts, all of Weakley except two districts.

14. The rulings of the committee to refuse investigation of charges in any districts of a county where the pleadings specify the entire county or all of the districts of a county except certain districts named, or where there are charges of irregularities in the certain counties, especially in certain specified districts thereof, are erroneous because the contest law expressly prescribes that there may be objections, designating counties, civil districts, wards and precincts, meaning thereby, so contestee is advised, either "counties" or "civil districts," or "wards" or "precincts." Specifications as to either are good and should not be eliminated.

15. The committee erred in ruling out the following allegations as to Davidson, Haywood and Shelby counties, and also in ruling out allegations of kindred character in numerous other counties, and in directing that no proof shall be taken thereon in said counties named and others as to which similar allegations are made in the petition:

Davidson County.

"In the city of Nashville voting precincts, the particular precincts not known, many ballots, the number not known, which had been marked and voted for contestee were during the count read out and counted fraudulently for Turney. As soon as contestee heard of this fraud he applied at the sheriff's office for the purpose of having preserved the ballots with a view to a possible recount, but the ballots had been destroyed.

No republican judge was appointed in the following wards and districts, but they

were all democrats, viz: (Here set out.)

The clerks and assistant registrars and receivers of votes were all democrats in all the wards and districts.

The democratic workers were allowed access to, and were, in fact, inside of the election booths and polling places in violation of law.

The registrars were not appointed ninety days before the election, but were appointed only a few days before the registration commenced and no legal advertisement of the registration was made.

The registrars were not appointed from different political parties, as required by law, but were all democrats, in the following wards and districts:

Wards 3, 4, 6, 8, 9, 10, 11, 12, 14, 17, 18, 19 and 20.

Districts 2, 3, 4, 7, 8, 9, 10, 11, 12, 14, 17, 18, 19, 20, 21, 22, 23, 24 and 25.

Haywood County.

"In this county only 76 republican (or Evans) votes were counted; there are in this county 3,000 voters who are anxious to vote for H. Clay Evans, but they did not vote, although they were qualified voters; because of the fraudulent course of the democratic election judges and clerks notoriously practiced in many previous elections of counting republican votes for democratic candidates. At each and every election held for a number of years in this (Haywood) county, this fraudulent practice of counting republican votes as though they were democratic votes had been indulged in by democrats against the protests of the republicans who were powerless to prevent it, and who, at the November election, rather than again see their votes counted for democratic candidates, abstained from voting altogether.

The democratic county court refused to give the republican representation on the board of election judges and clerks in all the districts, but when the law was pointed out to the court the appointment of intelligent republicans whose names were furnished was refused; and instead, non-representative republicans, who were ignorant men, were appointed by said court, thereby enabling the democrats to count the votes as they pleased. For this reason the republicans abstained from voting in the November election.

The registration of voters in Brownsville was fraudulent, illegal and void; the same was not properly advertised and the registrars were not properly appointed or qualified.

The republicans were denied representation in the board for the registration of voters and in the appointment of election judges and clerks. The whole machinery was fraudulently and illegally put into the hands of the democrats, and the republicans were thereby deterred from exercising their right of voting at said election.

At Brownsville, in said county, the registration certificates were not taken up from the registered Turney voters as required by law, thereby enabling said registration certificates to be used by "repeaters" in voting for said Turney, and a number of them were so used.

"There were no tally sheets and poll lists of said election made out and filed either with the clerk of the circuit court or county court, as required by law.

Shelby County.

"The sheriff of said county illegally and fraudulently destroyed the tally sheets and poll lists of said election at the following voting places: Sixth ward of Memphis; Fourth district, old Union; Sixth district, Raleigh; Eighth district, new Union; Eighth district, Brunswick; Tenth district, Collinsville, Twelfth district, Oraville; Fourteenth district, Elmwood; Fourteenth district, Westwood; Seventeenth district, Byerstown; Eighteenth district, Buntyn; Eighteenth district, Lenox; Eleventh district, Germantown. The following wards and districts returned statements of the total vote cast, but no tally sheets: 1st, 2d, 3d, 4th, 5th, 6th, 7th, 8th, 9th and 10th wards of Memphis; districs 1, 2, 3, 5, 6, 7, 8, 9, 12, 13, 16, 17 and 19.

"These irregularities are so material that the entire election was rendered illegal, and the vote should be rejected. Said frauds and irregularities were committed by the sheriff to help contestant Turney out, and they were a part of the preconcented plan, set on foot by the comptroller of the state, to fraudulently count Contestant Turney in, the comptroller having telegraphed his friend, A. J. Harris, from Nashville, in substance, as follows:

"Republicans conspiring to wipe us from the face of the earth. Turney our only salvation. See Patterson and McCarver. Do your best.

(Signed.) JAMES A. HARRIS."

This telegram was sent out when the returns began to indicate the election of Contestee Evans.

The rulings of the committee to exclude these allegations as to Davidson, Haywood and Shelby and those of like character in other counties, is erroneous because contestee is advised that such allegations if proven will set aside the entire election in counties where the irregularities occurred and where the frauds were committed.

16. The committee erred in eliminating from the pleadings, and of declining to hear proof upon many of the averments in the answer touching the cause of the defeat of the contestant at the polls and in also eliminating those averments going to show that conspiracy by republicans to violate the law, and not illegal votes cast for contestee, but refusal of democrats to vote for contestant, caused his defeat. Among the allegations, those erroneously ruled out and eliminated are the following:

"Contestee Evans now proposes to show by facts and figures, about which there can be no doubt, that said Contestant Turney was not defeated by illegal voting, but by democrats refusing to vote for him; for it cannot be denied that Contestant Turney's administration of the state govern-

ment, in many respects, had been disappointing and more than dissatisfactory to his party.

There are ninety-six counties in the state, in seventy-nine of which Contestee Evans made gains, while the Contestant Turney gained over the vote of two years before in thirteen counties only. The increase of contestee's vote over the republican vote of 1892 was 4,527, which might be accounted for by the growth of population; but the Contestant Turney lost over his own vote of 1892, 21,992 votes, and this loss was mainly in the strong democratic counties, lost over his vote of two the thousands refused to vote for Contestant Turney.

The Real Cause of Turney's Defeat

Contestee here produces and files as part hereof, marked exhibit B, a tabulated statement of the democratic and republican vote for 1892 and 1894, with the gains and losses of the candidates respectively; and Contestee Evans submits that this tabulated statement is sufficient, taken together with another exhibit hereinafter shown and marked "C," to convince Contestant Turney himself that he was not defeated by fraudulent votes, but by the refusal of his own party to support him. For illustration, said Contstant Turney, in the strong democratic counties, where the democrats by years before as follows: Davidson county 1,346, Shelby county 3,282, Montgomery county 702, Obion county 745, Stewart county 352, Sullivan county 240, Bedford county 315, Cannon county 177, Coffee county 236, Crockett county 325, Dickson county 355, Dyer county 510, Fayette county 459, Gibson county 713, Hardeman county 727, Haywood county 696, Humphreys county 359, Lincoln county 596, Weakley county 675, Wilson county 533. These are given as examples, and they tell the whole story, and show that the contestant was beaten by his own party.

No Fraud in East Tennessee.

And Contestee Evans now proposes to show, by figures and facts, that the charges made by Contestant Turney of frauds in the thirty-three counties named by him, are utterly without foundation. if he means to say or intimate that the judges of these counties indiscriminately or generally, or to any large extent, permitted persons to vote who had not paid their poll taxes. The election for judges of the supreme court took place in August, 1894, and at which election five democratic judges were elected, and they have since been qualified and are now on the bench holding court, without an intimation of fraud in their election. At the time of this election the law was the same as at the election in November, and the same qualifications and limitations were fixed upon the elector. Of the thirty-three counties challenged by the contestant, Turney, thirty of them cast less votes at the November election than at the August election. The aggregate excess of votes cast in the thirty-three counties in August over November is 11,026. This table shows that the wholesale charge of fraud is untrue, for there were more than 11,000 qualified voters in the thirty-three counties challenged by Contestant Turney than voted at the November election, assuming that the judges of the supreme court were voted for by qualified voters. Contestee Evans has no knowledge, information or belief that the election laws were systematically, purposely and intentionally violated at and in said counties, districts and precincts challenged by Contestant Turney, and he denies the same.

16. And the committee erred in ruling out and eliminating from the petition and refusing to hear and receive proof upon the following allegations, which are material and competent:

As to Violation of Poll Tax Laws.

"Contestee Evans further charges and avers that when by the refusal of the secretary of state to give to the public information as to the contents of the official returns of the vote for Governor, certified to him by the sheriffs of the several counties upon blank forms previously prepared by said secretary of state, and sent out by him to the sheriffs, and from other sources of information, it became known or generally believed by the people that Contestee Evans had been elected Governor, the contestant, Hon. Peter Turney, began at once to send out into the various republican counties of the state an army of employes of the comptroller's office to investigate the trustees' books of such counties for the alleged purpose of inquiring as to the alleged non-observance of the poll tax laws of the state in such counties, and he did, with the active aid of the said comptroller, send out into such counties a large number of his agents or tax detectives to make said investigations and inquiries.

"It was assumed that said agents and attorneys of the comptroller were sent out to make said investigations under the authority of an act of assembly authorizing that course to be pursued, and they were clothed by the comptroller with inquisitorial powers, authorizing them to examine the books and records of the trustees' offices and other public offices. They were to all intents and purposes clothed with the panoply of the state, for the said officers yielded and felt that they were bound to yield ready obedience to their demands. It is worthy of remark that the Governor and comptroller had never before in the history of the state felt the necessity, out of their supreme regard for the proper collection of that part of the sacred school fund represented by the revenue arising from the poll taxes, to send out simultaneously so many of the paid agents of the state, though the law under which it was claimed that the authority to send them out existed

had been in force for several years, and when, in point of fact, more revenue was collected from poll taxes in the year 1894 than had ever before been collected in any previous year of the history of the state.

Evans at Great Expense.

To meet the unjust and partial investigations which Contestant Turney through the machinery of the comptroller's office had set on foot, Contestee Evans at great private expense, began and prosecuted efforts to have an investigation extended and made into the same subject in democratic counties, but he met with three classes of obstruction:

1. The democratic trustees in some counties, acting, as it is fair to presume, under orders from their superiors in the command of the democratic forces, absolutely refused to allow contestee's agents or friends access to their books, and refused to give him certified statements of their contents.

2. In some counties the said democratic trustees offered to supply the information desired, but demanded such exorbitant and unjust fees that contestee was unwilling to submit to their demands.

3. Some of the county trustees allowed contestee's friends access to their books, but they had been so loosely and inartistically kept that they showed nothing upon which any accurate information could be gained.

For these and on account of the obstructions above stated Contestee Evans has been unable to set out more specifically than he has done the special precincts and districts in the counties voting for Contestant Turney wherein violations of the poll tax laws existed, and has also been unable to give more specific statements than he has given as to the number of violations of said law in said districts and precincts."

Conclusions.

And so Contestee Evans, by counsel, protests and excepts to said rulings of this committee set out and others to be shown for the reasons herein set out and others to be shown, and says:

1. The committee has no power and jurisdiction to suppress any part of the pleadings and none to decline to hear proof upon any of the issues in the pleadings raised.

2. The matters in the said cross-petition eliminated by the committee and upon which they decline to hear proof are material and the allegations sufficient.

He asks that these exceptions be received and filed and that they be made part of the record. Respectfully submitted.

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